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5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**

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8 NICHOLAS OLIVA; JOAN OLIVA,  
9 individuals,

2:08-CV-01559- PMP-LRL

10 Plaintiffs,

**ORDER**

11 vs.

12 NATIONAL CITY CORPORATION;  
13 NATIONAL CITY MORTGAGE  
14 COMPANY; NATIONAL CITY  
15 BANK OF INDIANA; MICHAEL  
16 DEMING, individually and as an  
employee/agent of National City;  
17 VIVIAN FURLOW, individually and  
18 as an employee/agent of National City,

Defendants.

19 On February 3, 2011, the Court conducted a hearing regarding Defendants'  
20 Renewed Motion for Summary Judgment (Doc. #85).

21 By this Motion, Defendants seek judgment on the grounds that no genuine  
22 issue of material fact remains that Plaintiffs have suffered, and can prove no damages  
23 as a result of the alleged conduct of Defendants. Defendants further argue that  
24 Plaintiffs' claim for negligence must fail because Defendants owed no predicate  
25 duty of care. Finally, Defendants argue that there remains no genuine issue of  
26 material fact that Plaintiffs had actual notice of the terms of their mortgage loan

1 agreement at the time of its origination in May 2005. The Court agrees and finds that  
2 Defendants' Renewed Motion for Summary Judgment (Doc. #85) must be granted.

3 Specifically, even if Plaintiffs were able to show Defendants knowingly  
4 made false representations to Plaintiffs intending to induce Plaintiffs act in reliance  
5 on their misrepresentation, and assuming further Plaintiffs in fact relied upon  
6 Defendants misrepresentations, there is no genuine issue of material fact regarding  
7 whether Plaintiffs suffered any damages as a result of relying on Defendants  
8 misrepresentations. The record clearly establishes they did not.

9 Moreover, Plaintiffs have failed to demonstrate that a genuine issue of  
10 material fact remains regarding whether they justifiably relied on any misstatements  
11 made by Defendants. As argued by Defendants, all parties have an equal opportunity  
12 to examination the terms of the loan agreement which negates the argument that  
13 Plaintiffs reliance on any alleged misrepresentations by Defendants was justifiable.

14 The Court further finds that Plaintiffs negligence claim must fail because  
15 Plaintiffs cannot show that Defendants owed a general duty of care regarding the  
16 placement of the mortgage loan.

17 **IT IS THEREFORE ORDERED** that Defendants' Renewed Motion for  
18 Summary Judgment (Doc. #85) is **GRANTED** and that the Clerk of Court shall  
19 forthwith enter judgment in favor of Defendants and against Plaintiffs.

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1           **IT IS FURTHER ORDERED that** Defendants' Motion to Dismiss (Doc.  
2 # 77), Defendants' Renewed Motion in Limine (Doc. #83), Plaintiffs' Motion for  
3 Leave to File Second Amended Complaint (Doc. #86), Plaintiffs' Motion to Strike  
4 Defendants' Answer (Doc. #90), and Defendants' Counter Motion for Attorneys Fees  
5 (Doc. #99), are **DENIED** as moot.

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7 DATED: February 4, 2011.

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10 PHILIP M. PRO  
United States District Judge